IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

CRP.No. 2788 of 2001(C)

AGAINST THE ORDER DATED 25/06/2001 IN IA.531/2001 IN OS.14/1997 of MUNSIFF COURT, QUILANDY

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REVN. PETITIONER/PETITIONER(SUPPLEMENTARY PLAINTIFF):

KOODATHUMKANDY VALSALA,
S/O. IMBICHIKKU VYDIAR,
MUDUVANA, ULLIYERI,
QUILANDY.

BY ADV. SRI.K.I.MAYANKUTTY MATHER

RESPONDENTS(SUPPLEMENTARY DEFENDANTS) /RESPONDENTS:

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1. KOODATHUMKANDY GANGADEVI,
VELOOR AMSOM DESOM, QUILANDY.
2. KOODATHUMKANDY MEENALAKSHMI,
KOLLOTH HOUSE, RARICHAN ROAD,
KOZHIKODE.
3. KOODATHUMKANDY VIJAYLAKSHMI,
ILLATHU HOUSE, WEST HILL, KOZHIKODE.
4. KOODATHUMKANDY RAJEEVAN,
KOODATHUMKANDY HOUSE,
VELLOR AMSOM, DESOM QUILANDY.
5. SUBHA,
KACHERIPOYIL HOUSE,
MOKERI, KUTTIADI,
QUILANDY.
6. MANOJ, KOODATHUMKANDY HOUSE,
VELOOR AMSOM, QUILANDY.
7. SHARMILA, PADATHU HOUSE,
PURAKKATTERY, THALAKULATHOOR,
KOPZHIKODE.
8. SANTHOSH, KOODATHUMKANDY HOUSE,
VELOOR AMSOM DESOM, QUILANDY.
9. DR. P. SANKARAN,
RETD. CIVIL SURGEON, ANUPAMA,
VELOOR AMSOM, QUILANDY.
10. P. SEKHARAN (WRONGLY STATED IN THE ORDER AS SANKARAN)
MEERAJ,
VELOOR AMSOM DESOM, QUILANDY

BY

C.R.P.2788/01

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/01/2007, ALONG WITH CRP NO. 2784 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.
C.R.P.NO. 2788/01 &
C.R.P.NO.2784 OF 2001

DATED THIS THE 19th DAY OF JANUARY, 2007

ORDER

Petitioner is plaintiff and respondents defendants in O.S.14/97 on the file of Munsiff Court, Quilandy. O.S.14/97 was filed by now deceased Radha through her sister as next friend to set aside the exchange deed 2939/96 of SRO Chemancheri and for partition of plaint schedule property. When the suit was pending, Radha died. The next friend, her sister was impleaded as supplemental plaintiff and the suit was continued. When evidence was partly recorded, petitioner filed I.A.530/01 and 531/01, applications to examine the doctor contending that the doctor had treated deceased Radha for mental illness. Under common order dated, 25.6.01, learned Sub Judge dismissed the application. These revisions are filed challenging the said common order. Subsequent to the filing of revisions, suit was dismissed for default and was finally restored to file as per order in I.A.765/01 on 5.6.04.

2. Learned Counsel appearing for petitioner and respondents were heard.

3. Arguments of learned Counsel appearing for petitioner was

that evidence of the doctor is relevant and necessary to prove the plaint claim and therefore learned Sub Judge should have permitted petitioner to examine the doctor.

4. Learned Counsel appearing for respondent argued that when PW1 was examined, she was cross examined with regard to the treatment allegedly given to Radha and she has no case that the doctor sought to be examined treated Radha and in such circumstances there is no necessity to examine the doctor and learned Sub Judge rightly dismissed the application.

5. On hearing learned Counsel appearing for petitioner and respondent, I do not find any reason to shut out the evidence and deny permission to petitioner to adduce necessary and relevant evidence in support of the case. Question whether the doctor, who is sought to be summoned and examined, had treated Radha is to be decided by learned Sub Judge on the evidence. Anticipating the evidence, it is not proper to deny opportunity to petitioner to examine the witness. In such circumstances, revisions are allowed. The common order is set aside. I.A.530/01 and 531/01 stand allowed and petitioner is permitted to examine the witness as sought for.

Learned Sub Judge is directed to complete the examination of

witnesses and dispose the suit as expeditiously as possible and in any event within two months from the date of receipt of copy of this order.

M.SASIDHARAN NAMBIAR,JUDGE

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